

March 17, 2008

Kendall Van Dyk
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Subject: Complaint received January 24, 2008

You filed a complaint alleging that David Berg and Roy Brown violated several campaign finance and practices statutes. Your complaint focuses primarily on § 13-37-217, MCA, which provides:

Contributions in name of undisclosed principal. No person may make a contribution of his own money or of another person's money to any other person in connection with any election in any other name than that of the person who in truth supplies such money. No person may knowingly receive such a contribution or enter or cause the same to be entered in his accounts or records in another name than that of the person by whom it was actually furnished.

The complaint alleges David Berg violated this statute when he made a \$100 contribution to the Roy Brown for Governor campaign in the name of David Berg, rather than in the name of David Fulwiler. The complaint claims Roy Brown violated the statute by knowingly receiving a contribution in the name of someone other than the person who actually furnished the money. The complaint also alleges violations of §§ 13-37-229(2) and 13-37-231 based on the same assertion – that a contribution in the name of an undisclosed principal was made.

David Fulwiler and David Berg are the same person. “David Berg” is the professional name used by Fulwiler in his radio program “Berg in the Morning,” which is broadcast in the Billings area and in other areas around Montana. The \$100 check to the Roy Brown for Governor campaign contains both names – David Fulwiler and David Berg – printed above the address of the account holder. The check was signed “David Berg.”

The complaint does not dispute that Fulwiler and Berg are the same person. Rather, the complaint alleges that Berg’s real last name is Fulwiler, and when he made a contribution in the name of Berg rather than Fulwiler he violated § 13-37-217, MCA.

The Roy Brown for Governor campaign reported a \$100 contribution from “David Berg.” According to the most recent edition of the Accounting and Reporting Manual for Candidates and Campaign Treasurers, published by the office of the Commissioner of Political Practices, a contribution drawn on a joint checking account should normally be reported in the name of the person who signed the check. (See also ARM 44.10.511(2).) The Roy Brown for Governor campaign properly reported the check as a contribution from David Berg.

The obvious purpose of § 13-37-217, MCA, is to prohibit “money laundering” of campaign funds. The public has a right to know who is financially backing candidates for public office. If a contribution is made or reported in the name of a person other than the person who actually provided the money, the public’s right to full disclosure is impeded. The information provided to me in this case establishes that David Berg, also known as David Fulwiler, actually provided the money for the \$100 contribution to the Roy Brown for Governor campaign.

Based on the information presented, there is no evidence that David Berg made a contribution in the name of an undisclosed principal in violation of § 13-37-217, MCA, or that Roy Brown knowingly received a contribution in violation of the statute. It follows that there is no evidence that §§ 13-37-229(2) or 13-37-231 were violated. The complaint is dismissed.

A handwritten signature in black ink, appearing to read "Dennis Unsworth". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dennis Unsworth
Commissioner of Political Practices

Copy: Roy Brown
David Berg